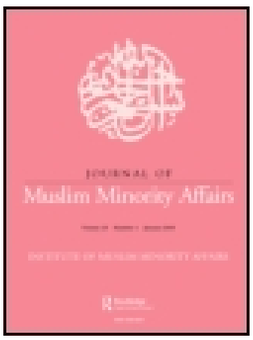

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Mahmoud Jaraba

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Khul' in Action: How Do Local Muslim Communities in Germany Dissolve an Islamic Religious-Only Marriage?

MAHMOUD JARABA

Abstract

Relying upon extensive ethnographic field-collected data as well as 51 privately performed documents of khul' (divorce initiated by a woman), this article addresses two questions. Firstly, how have practices of khul' among local Muslim communities been influenced by Germany's secular state framework? Secondly, how do local religious actors develop extrajudicial religious forms of mediation and arbitration, often taking place in a mosque or a private place, in order to fulfil certain aspects of sharīʿah? The paper argues that the absence of a recognised Islamic judicial authority or formally recognised Islamic mediation and arbitration service in Germany has led Muslim communities to come up with "local experts", who purport to implement elements of sharīʿah through informal mediation and arbitration. This leads to new religious actions and norms which might, in the future, lead to normalised new practices in countries such as Germany where Muslims are a minority.

Keywords: khul'*;* ṭalāq*;* ḥaḍāna*;* imams*;* sharīʿah*; mediation; arbitration; Islam in Germany; European Muslims; new anthropology of Islam*

Introduction

For members of Muslim communities in Germany, the process of conducting an Islamic religious-only marriage is an effortless, uncomplicated and swift process. However, when this type of marriage breaks down, or when a wife wants to end the relationship against the husband's wishes, she might then face legal, social, economic, and emotional consequences. Relying upon extensive ethnographic field-collected data as well as 51 privately executed documents of *khul'*[1]—a form of divorce initiated by a woman in which she pays *fidya* (compensation) to her husband in return for his agreement to terminate the marriage[2]—the purpose of this article is to examine two central questions.[3] Firstly, how have the religious practices among local Muslim communities regarding *khul'* been influenced by the German secular state context? Secondly, how do local religious actors develop various extrajudicial religious forms of mediation and arbitration, which often

Mahmoud Jaraba is Research Fellow at the Max Planck Institute for Social Anthropology, Department "Law & Anthropology", Halle, Germany. He has studied socio-legal pluralism in Germany, especially the idea of "*paralleljustiz*," (parallel justice) and is currently engaging in a research project on extra-judicial dispute resolution mechanisms among number of minority groups (defined ethnically, culturally, and religiously) living in Germany. In addition, Jaraba looks specifically at the unofficial roles played by religious actors in settling family disputes among Sunni Muslims in Germany. He has also worked with a number of Palestinian NGOs and research centres.

take place in a mosque or a private place, in order to practice and apply certain aspects of the *sharīʿah* to *khulʿ*?

In recent years, a growing body conducting socio-legal work on the practice of Islamic law has emerged.[4] Some scholars are now drawing a theoretical and practical distinction between two different attributes of *sharīʿah*, the first of which relates to the moral, ethical and spiritual aspects of Muslim religious practices, placed in the category of "non-law-based", i.e. not juridically enforceable and existing mostly outside the scope of legislation in Western countries. The second attribute, on the other hand, is strictly legal or "law-based", which relates to family law or inheritance and is subject to juridical enforcement in a strict legal sense.[5]

The *Sharīʿah* Councils in Britain and Europe

In Europe recently, some scholars have conducted in-depth studies on different applications of *sharīʿah* "law" outside the court systems, through either mediation or religious arbitration. Most of these studies have taken a close look at the British context by analysing the different roles played by *sharīʿah* councils in offering *sharīʿah*-compliant solutions to family and personal disputes.[6] Since 1982, *sharīʿah* councils have been operating unofficially in Britain to deal with civil disputes. These councils have no legal authority and are incapable of imposing sanctions. However, most of the British *sharīʿah* councils are well-organised, institutionalised and offer professional advice. As Bowen observes, "they provide downloadable forms on their websites, charge set fees for service, and meet on scheduled days of the month".[7] Whether in London, Birmingham, Manchester or Bradford, there are *sharīʿah* councils providing services by appointment or online, including marriage, divorce, *khulʿ* besides many other mediation and arbitration services.[8]

In contrast to the British *sharīʿah* councils, extrajudicial mediation and arbitration in other European countries are, to a great extent, informal and unregulated. As Bowen puts it, "alone among Western countries, Britain has a range of institutions that mediate or arbitrate conflicts among Muslims".[9] In such contexts, what will happen if a wife or a husband seeks help and support within their community regarding a private family dispute? To answer such a question, a number of studies and research projects have been—or are currently—tackling this complex task, by analysing the unofficial and informal roles played by religious actors in settling family disputes, or in implementing certain family-related aspects of *sharīʿah* in different European countries.[10]

In Germany, scientific work conducted on the practice of Muslim religious extra-judicial mediation and arbitration, as Mathias Rohe recently notes, "has been close to a blind spot so far".[11] The debate on extrajudicial mediation has been more public and political than academic and legal. For several years, the German media and some politicians have commented on extrajudicial practices, describing them as a system of "*paralleljustiz*" (parallel justice), i.e. a system characterised by its own regulatory mechanisms, operating mostly outside the framework of the state law, and potentially violating, undermining or thwarting German legal standards. In many cases, media debate has created the impression that such a system is based on *sharīʿah,* which, in turn, undermines the state's monopoly on the use of force. In this context, *sharīʿah* is perceived as a threat to Germany's constitution, laws, and culture. Recently, the debate on "*paralleljustiz*" has been officially introduced into the political agendas at the federal levels and government. As of March 2018, the coalition treaty of Christian Democrats (CDU), the Christian Social Union (CSU) and the Social Democratic Party (SPD) declared that "*illegale paralleljustiz*" (illegal parallel justice) would not be tolerated and that the government

would, instead, support the development of "Law—Made in Germany". The Alternative for Germany (*Alternative für Deutschland, AfD*), a right-wing political party, brought the debate to the German Parliament (the *Bundestag*) by requesting the Federal Government to clarify the relationship between "*paralleljustiz*" and the application of Islamic *sharīʿah*.[12] At the federal levels, different initiatives and projects have been created in order to study, exchange information, and develop solutions to the phenomenon of "*paralleljustiz*".

As opposed to this public debate, few projects, based on empirical research and comparative data gained in fieldwork, are currently attempting to tackle and understand the phenomenon of "*paralleljustiz*" in its socio-legal complexity and cultural contexts.[13] According to Mathias Rohe, the phenomenon of "*paralleljustiz*" differs fundamentally from the admissible or (even) requested Alternative Dispute Resolution (ADR) in general. While the latter is based on voluntary participation, neutrality and professionalism of the mediators/arbitrators, as well as respect for the applicable law, "*paralleljustiz*" thrives on the intimidation of the weak party and the lack of state protection. "*Paralleljustiz*" is further characterised by its own regulatory mechanisms compared to state- centred laws.[14]

This study seeks to fill some lacuna of conflict regulations among Muslim communities in Germany. It investigates how Muslim actors use different forms of informal mediation and arbitration to decide on issues related to *khul‘,* when a marriage reaches a point where the wife is absolutely certain about terminating her marriage but the husband refuses to divorce her. Based on intensive ethnographic fieldwork, this paper suggests that the absence of a recognised Islamic judicial authority in Germany, or a formally recognised Islamic mediation and arbitration service, has led Muslim communities to come up with "local experts" capable of implementing various elements of *sharīʿah,* through informal mediation and arbitration. Consequently, this might implement new religious actions and norms as well as normalise new practices in settings, such as Germany, where Muslims are considered a minority.

After having presented, firstly, the methodology implemented to gather the ethnographic data, this paper discusses the *nikāḥ* (Islamic marriage contract), and how such marriages may entail significant consequences since the parties involved have no legal standing or lawful claim to the various legal rights of a spouse. Furthermore, in case a marriage breaks down and the husband declines the request for a divorce, the wife may find herself in an unresolved situation, not backed up or protected by law. The research explains how, in order to assist these women, different types of religious mediation and arbitration are practised by religious actors, as well as considering the limitation of such practices and their shortfalls. The next part of the paper focuses on the analysis of fifty-one *khul‘*-related documents, which are divided into two main sections. The first section deals with cases where *khul‘* is practised by mutual consent between husband and wife and how, with the assistance of religious actors, the two parties can solve disagreements and conflicts related to *fidya* and the custody of children. The second section discusses cases that were solved by means of "judicial *khul‘*", and how religious actors invoke particular religious opinions (*fatwā*) through which they can acquire for themselves some of the powers normally reserved for judges in Muslim countrie. They use these to end a *nikāḥ* through *khul‘*, even if a husband withholds consent.

Bowen's "New Anthropology of Islam"

Following John Bowen's work on "new anthropology of Islam", this article aims to contribute to this debate through examining the constitutive practices of *khul‘* within the

complexity and diversity of Arab Muslim communities in Germany. This approach, as suggested by Bowen, has increasingly focused on religious texts and ideas exclusively, as they are both understood and shaped at specific times and places.[15] Studying Islam and Muslims, therefore, begins with individuals who grapple with "text" to shape people's lives and give them a new meaning. In other words, I study both practices in which people engage as well as new norms and meanings that they have been trying to evolve and socially construct. To quote Bowen:

> This way of looking at Islam thus starts from people drawing on textual traditions to inform social practices, and it allows us to engage in two complementary analytical strategies. The first is "focusing inward," by deepening our understanding of intentions, understandings, and emotions surrounding specific practices, usually with a great deal of attention to individual testimonies and histories.[16]

The analysis in this article has been based on the ethnographic fieldwork undertaken in different phases between 2013 and 2017 in the German states of Berlin, Bavaria, North Rhine-Westphalia and Hesse. Over 130 qualitative interviews have been conducted with male religious actors who, in one way or another, have dealt with issues relating to the practice of *nikāḥ*, *ṭalāq* (Islamic divorce) and *khul'*. All of those actors are serving mainly in Sunni Muslim communities, and most of them are of Arab origin. The duration of the interviews varied considerably; some lasted for only 30 minutes, whereas others went on for almost three and a half hours. Using a semi-structured interview method, the interviews were conducted on a face-to-face basis and many of the participants were interviewed several times.[17]

Most importantly, the opportunity to examine thousands of documents containing valuable information about the terms and conditions pertaining to *nikāḥ*, *ṭalāq* and *khul'* was rather slim during the fieldwork conducted in Berlin in 2015. I was allowed to make copies of approximately 2000 private documents, including 51 documents on *khul'*. The analysis in this article will be based on these 51 documents, which were originally issued by religious actors in Berlin and are currently stored at the University of Erlangen-Nuremberg, encompassing private detailed information on the procedure of *khul'* and its stipulations. The documents also contain the numerous solutions that religious actors have proposed following a wife's request for a *khul'* subsequent to a breakdown of her marriage. Furthermore, the texts shed light on the role of *imam*s in the process of *khul'*, the amount of *fidya* that a wife is expected to pay to her divorcee, and issues pertaining to child custody. It is also important to note that all of these documents are pertaining to cases of Islamic religious-only marriages.[18]

The *Nikāḥ* Dilemma

According to the interviews conducted for this study, an increasing number of Muslims in Germany, particularly in Arab communities and among refugees, are currently deciding to opt for religious-only marriages, without registering them according to state laws and regulations. There are different reasons and motivations of why some couples choose a religious-only marriage such as religious preference, cultural bias and lack of information about civil marriage.[19] In addition, insufficient documentation is a crucial factor. There is a legal requirement to procure a marriage eligibility certificate (*Ehefähigkeitszeugnis*), from the state of origin, which testifies that the couple is not yet married. This document, however, is often difficult to provide. It was also noticed, during my

participant observation, that the legal requirements and procedures of the local registry office (*Standesamt*) differ from one place to another, which sometimes makes it impossible for a couple to register their marriage.

In summer 2016, I volunteered to help Syrian refugees with translation to register their marriages at the concerned registry offices (*Standesamt*) in the cities of Nuremberg and Fürth in northern Bavaria. I found that, while the proceedings in Nuremberg were rather straightforward and required minimal bureaucratic procedures, it was quite the opposite in Fürth. For instance, officials asked the couple to include a marriage eligibility certificate in their application, which would have to be certified by the German Embassy in Beirut, since the German Embassy in Damascus has been closed since 2012. Since they were unable to secure the needed document from Lebanon, this made it impossible for the couple to register their marriage in Germany, and they thus later decided to resort to a religious-only marriage. The other couple in Nuremberg had a totally different experience, even though they had the same refugee status as did the first couple, i.e. full protection status for three years and travel documents as foreigners in Germany. I observed that the registry office in Nuremberg attempted to make everything less bureaucratic, and did not demand a marriage eligibility certificate to register the marriage of the couple. Within few weeks, they were able to register their marriage, and celebrate later on with an Islamic marriage ceremony.

There are virtually no official statistics on the frequency of religious-only marriage in Germany, and all the *imam*s interviewed came up with relatively different estimates. For instance, Mamdouh,[20] a Palestinian *imam* in Berlin, appraised the percentage of religious-only marriage in the Arab communities in Berlin at approximately 70%, whereas Anas, a Tunisian *imam*, estimated it to be roughly 50%. *Imam*s from the Turkish community estimated the rate to be between 20% and 30%. Abdulkader, an Egyptian *imam* affiliated with an Islamic centre in Southern Germany, believes that, in the light of the growing number of Muslim refugees currently flowing into the country from conflict zones in Syria, Iraq and Afghanistan, the number of religious-only marriages is likely to increase. He, like many other *imam*s interviewed, trusts that these people will find it difficult to obtain the identity documents required for the civil marriage registration process.[21]

In Germany, religious-only marriages are sometimes referred to as “Islamic marriage”, “mosque marriage” or simply “*nikāḥ*”. Most of these forms include all or some of the elements involved in Islamic *nikāḥ*, such as two witnesses, *mahr* (dower), and/or family agreement and publicity of the *nikah*. However, all of these *nikāḥ* types of marriage have no civil ceremony, and they do not fully comply with the prerequisites of a state-run civil marriage. Religious-only marriages,[22] which are not registered at the registry offices and thus do not comply with the state law or the entailed formalities, are not recognised by state authorities and might have significant ramifications. The German legal system and courts only recognise civil marriages that have taken place in the presence of a civil servant in line with standard legal procedures. Unlike some European countries, such as England and Spain, which recognise religious marriages if performed in the presence of an authorised civil servant and registered with civil authorities, the *Standesamt* (registry office) is the sole central state authority responsible for the registration of marriages in Germany. As opposed to other European countries, such as the Netherlands,[23] which criminalise all that is involved in such marriage ceremonies, Germany does not criminalise such a form of marriage. However, religious-only marriages, which occur in mosques or private places such as homes, private offices or sometimes coffee shops and are performed by a religious figure or common individuals (laypeople), are not

recognised by the state. Therefore, the parties involved have no legal standing or lawful claim to various legal rights of a spouse, such as inheritance, tax benefits, or social support.

Although German courts do not recognise Islamic religious-only marriage as legal marriage, such forms of marriage are considered to be legitimate on religious, moral, and social levels, and women involved in such marriages are unable to remarry within their religious community unless they get a religiously-recognised divorce (*ṭalāq*). Should a marriage break down and a husband decline a request for divorce, a wife may find herself in an unresolved situation and without any legal protection. Since such a woman's marriage was never registered in a civil registry,[24] such a religious-only marriage is considered as non-marriage in the eyes of German courts and is "simply ignored by German law".[25] To make it worse, such women might also not find any help by socially recognised religious authorities, because such identities have not been institutionalised in Germany.[26] Based on the fieldwork conducted, it can be said that Germany is lacking all forms of civil Islamic arbitration or mediation that can exercise jurisdiction over marriage or divorce and make religious rulings.[27] Consequently, many women are unable to terminate their marriage and must continue living in an unsettled situation, unless their husbands are willing to divorce them. In Arab Muslim communities in Germany, a woman in such a situation is referred to as "suspended" (*muʿallaqa*, plural *muʿallaqāt*).[28]

The following case highlights the form of organised blackmailing that a woman seeking divorce through *khulʿ* might encounter. In the summer of 2015, I met a 23-year-old German-born woman, Ahlam, in Berlin, along with her Palestinian parents. For more than three years, Ahlam, who chose a *nikāḥ* with a second-generation Palestinian, has, so far, unsuccessfully been trying to leave her husband. Her mother gave the subsequent account of her situation:

> My daughter has been in a state of limbo (*muʿallaqa*) for the past three-and-a-half years and no one can do anything. She is being approached with marriage proposals (*khuṭba*), but she cannot get married since [her husband] has yet to divorce her. His family members are blackmailing us and want us to pay everything in return for her divorce. They are exploiting the fact that we have no one to help here, but I tell them that God is there for us. [The Muslim community and the German state] should find a solution. People are blackmailing each other and women are being kept in uncertainty because husbands want to be refunded for all the money they have spent on them. Is that acceptable in our religion?![29]

In such a situation, both Ahlam and her family will most likely resort to local religious actors in the hope that they might be able to help the couple reach a mutual agreement over how best to dissolve their *nikāḥ*.

Muslim Mediation and Arbitration in Germany

In order to protect women seeking to end an unwanted marriage, Muslim communities practice different types of religious mediation and arbitration. It is also important to note that Muslim communities in Germany are diverse groups both culturally and ethnically and are significantly different in the way they approach and deal with internal family conflicts. Although Muslims as individuals and small groups have actually had a presence in Germany for hundreds of years, their current presence is, first and foremost, a result of the labour migration of the 1960s and early 1970s.[30] In subsequent decades, asylum became another reason for immigration. Asylum seekers came mostly from Lebanon,

Table 1. Ethnic/national backgrounds of Muslims in Germany.

Turkish	50.6%
Middle Eastern	17.1%
Southeast Europeans	11.5%
South/Southeast Asian	8.2%
North African	5.8%
Sub-Sahara African	2.5%
Central Asian/CIS	2.4%
Iranian	1.9%

Note: Anja Stichs, "*Wie viele Muslime leben in Deutschland? Eine Hochrechnung über die Anzahl der Muslime in Deutschland zum Stand 31. Dezember 2015*", Im Auftrag der Deutschen Islam Konferenz (Working Paper 71), 2016, p.31.

Turkey, Iran, former Yugoslavia and most recently from Syria, Iraq, Afghanistan, Iran, and Africa.

Based on demographic and statistical information, it is believed that Germany today is home to around 4.4–4.7 million Muslims (accounting for 5.4–5.7% of the 82.2 million inhabitants of Germany) who are ethnically, religiously, and culturally very diverse (Tables 1 and 2).

As opposed to the English socio-legal context, which allowed Muslims to develop bodies to resolve their internal conflicts using a different form of mediation and arbitration, there are some areas where the German legal system does not take private dispute-settlement arrangements into account. Many areas of family law, such as issues associated with marriage and divorce, are an "absolute state monopoly", and all private dispute settlements are disregarded. In effect, "the Federal Court has explicitly stated that the German legal order does not recognise an autonomous regulation of family law, law of persons and law of inheritance by religious communities".[31] However, this excludes private regulations on matrimonial property or other financial aspects of divorce, which may be a matter for arbitration.[32]

With regard to Islamic religious-only marriages, which are ignored by court and are considered as a "non-marriage", there is nothing in the German law that prohibits the usage of different mechanisms of mediation as long as these mechanisms do not contradict the prevailing laws. The law of Germany both protects and regulates mediation as it is a flexible, cost-effective and practical alternative to court proceedings. The Federal Law of Mediation (*Mediationsgesetz*) and the Code of Civil Procedure (*Zivilprozessordnung*) all facilitate traditional forms of dispute resolution and mediation taking place outside

Table 2. The inner-Islamic groups of Muslims in Germany.

Sunnis	74.1%
Alevis	12.7%
Shi'is	7.1%
Ahmadis	1.7%
Ibadis	0.3%
Sufis	0.1%
Others	4.0%

Note: Sonja Haug, Stephanie Müssig and Anja Stichs, *Muslim Life in Germany: A Study Conduced on Behalf of the German Conference on Islam*, Research Report 6, Nuremberg: Federal Office for Migration and Refugees, 2009, p. 92.

courts. While the system does not explicitly offer religious judgments, it at least accepts dispute resolution structures, both in the form of mere mediation between the parties and in the form of an arbitration by an appointed court-like institution, as long as the solutions and the proceedings applied do not interfere with certain indispensable requirements established by state law.[33] In other words, the German courts will go along with a settlement reached through a private arbitrator or mediator, unless it fails to comply with "the general norms and values of state law, namely the fundamental rights of the citizens".[34] To elaborate, people can usually rely on the state to enforce settlements which have been reached by such means.

As Rohe has recently explained, the ADR "under the auspices of any cultural or religious norms is acceptable or even desirable so long as it meets the following prerequisites:

- The parties must freely agree on the ADR mechanism, and opting out at any time has to be granted;
- Undue pressure or the exercise of violence against the parties, witnesses or other persons involved must be avoided;
- The ADR process must be performed neutrally and professionally;
- The limits of mandatory law of the country must be respected".[35]

Based on the fieldwork conducted, it can be stated that the various extrajudicial religious forms of mediation and arbitration among Arab Sunni communities in Germany do not meet some or all of the previous prerequisites. Mediation and arbitration are still unofficial and informal practices, with insufficiently distinct or transparent guidelines or institutional structures in place to regulate them through a set of decided, approved, and standardised procedures. In addition, they are not subject to any form of state or judicial recognition or regulation, and all of the religious actors interviewed in this study neither have the accredited mediation certification nor the licences needed to engage in the profession and deal with social and family conflicts as required by law.[36]

Furthermore, in practice, individual rights, especially women's rights, are in some cases relinquished under strong religious and social pressure to reach a win–win agreement. During the fieldwork conducted, I came across several cases of women being pressured into waiving their financial rights (e.g. their *mahr*) to get an Islamic divorce or *khul'*. Therefore, it can be said that there is sometimes a difference between theory (according to the religious mediators) and reality. From the perspective of religious actors, the process of mediation leads to a win–win situation that is fair and satisfies all parties involved. However, in reality, not all parties are necessarily satisfied or convinced that they have received their full rights.

Religious actors who engage in settling private, religious, economic, or social conflicts through mediation or arbitration, and can therefore be defined as applying *sharī'ah*, handle family disputes and issue *nikāḥ* and *ṭalāq* or *khul'* certificates. There are two chief types of religious actors which should be distinguished clearly—(1) *imam*s, who remain the most important religious actors, and (2) self-appointed independent mediators and arbitrators who, in most cases, operate independently of mosques or prayer rooms. Both these groups of actors attempt to legitimise decisions by basing them on religious scriptures (Qur'an and *Sunnah*). On a different note, there are around 2350 mosques and prayer rooms (including Alevi *cem* houses) to satisfy the religious and social needs of the Muslim communities, which employ approximately 2179 *imam*s (or *dede* for Alevis) to fulfil a range of different functions.[37] Many of those *imam*s extend their role beyond the limited confines of worship to cater for all

aspects of Muslim life, including attempts to resolve family disputes, through playing the role of a “mediator” (*wasīṭ*) or “arbitrator” (*muḥakkam*).[38] Consequently, the role of many *imam*s has shifted from being limited solely to leading prayers or teaching children the Qur’an, to offering help in matters of family disputes, marital discord, or even performing the role of a Muslim judge (*qāḍī*) in order to grant women a *khul‘*.

The Analysis of *Khul‘* Documents: An Overview

In Islam, the right to *ṭalāq* is exclusively the prerogative of the man.[39] Divorce occurs when a mentally fit man utters the word/ phrase of divorce in front of his wife or, according to *sharīʿah*, in her absence before a Muslim judge. In such cases, the husband is obliged to pay his wife alimony and honour her *mahr*.[40] On the other hand, when a husband is unwilling to divorce his wife, she is usually faced up with three equally unpalatable options. First, continue to live with the husband and endure the associated psychological or physical harm involved; second, move out and live alone, giving up on obtaining a divorce or remarrying, thus putting herself in a state of uncertainty burdened by the intrinsic pressure of religious convictions or external social pressure. Finally, she can seek *khul‘* and most probably pay the husband a *fidya*, which might be the *mahr*, or part of it (or, in some cases, a very large sum of money) in return for his agreement to terminate the marriage.

The historical sources and religious legitimacy for *khul‘* are mentioned in both the Qur’an and the *Sunnah*. The legality of *khul‘* can be found in Verse 2:229:

> Divorce is (revocable) two times (after pronouncement), after which (there are two ways open for husbands), either (to) keep (the wives) honourably, or part with them in a decent way. You are not allowed to take away the least of what you have given your wives, unless both of you fear that you would not be able to keep within the limits set by God. If you fear you cannot maintain the bounds fixed by God, there will be no blame on either if the woman redeems herself. Do not exceed the limits of God, for those who exceed the bounds set by God are transgressors.[41]

Verse 2:229 does not specify the amount and type of *fidya* a woman should return to her husband in exchange for her release. However, a well-established *hadīth* clearly specifies that a woman should return the *mahr* that her husband has given her.[42] The *hadīth* version can be found below:

> The wife of Thabit b. Qays b. Shammas [Habiba] came to the Messenger, peace be upon him, and said: ‘O Messenger of God, I do not hate Thabit neither because of his faith nor his nature, except that I fear unbelief.’ The Messenger of God, peace be upon him, said: ‘Will you give back his orchard?’ She said ‘Yes’ and she gave it back to him and he [the Prophet] ordered him and so he [Thabit] separated from her.[43]

However, the Islamic schools of law have different views and interpretations of how *khul‘* can be best practiced and enforced.[44] As will be discussed below, Muslim scholars are divided over whether or not the judge has the right to terminate a marriage contract should a husband refuse to accept his wife’s request for a *khul‘*. They also disagree about the permissible amount and type of *fidya*.[45] In Muslim countries, this is also practiced differently from one place to another.[46]

In Germany, according to the fieldwork conducted for this research, religious actors were starting to discuss and practise cases of no-fault divorce by means of a *khul‘* procedure as far back as the mid-1990s, and the documents collected during the fieldwork confirm this finding. The chronological order of the documents along with the number of cases is as follows: three cases in 1998, two cases in 2000, 2004, 2006, 2007 and 2008 respectively, three cases in 2009, nine cases in 2010, twelve cases in 2011, three cases in 2012 and finally one case in 2015.[47] The nationalities of the husbands were Lebanese, Jordanian, Syrian, Iraqi, Palestinian, Yemeni, and Kuwaiti, respectively. The wives, for their part, came from Germany, the Czech Republic, Lebanon, Egypt, Iraq, Syria, and Palestine.

All of the 51 documents include statements and terms that directly pertain to *khul‘*. They were set out in the following way, except where it was necessary to include other conditions relating to child custody or financial disputes.

> *Khul‘* and *ibrā’* Document
> Praise be to Allah and May Peace be Upon His Messenger
> The Islamic Institution of { … } testifies that the husband: Bilal Al-Tamimi, Place of Birth: Berlin, has divorced his wife: Fatima Abd, Place of Birth: Berlin. Based on her desire to be divorced from the husband, the wife is considered to be divorced from the husband in an irrevocable manner with minor separation. Rights of the Husband: he has the right to get back the full amount of the *mahr,* which is a total of four thousand euros and a complete set of gold jewellery. Rights of the wife: she has waived all of her legitimate rights and is not entitled to any financial rights.
> Based on the Wife’s Request
> The wife uttered the following words in the presence of the husband: “I absolve you from your responsibilities under the bond of matrimony,” and the husband replied: “I accept that and I divorce you.”
> As of 22/03/2013, she must observe a one-month waiting period [before remarrying].

Although all the documents contain various terms used to indicate *khul‘*, only 38 of the 51 documents bore titles that clearly referred to the *khul‘* process, while the remainder had no titles at all other than the generic *bismillāhi r-raḥmāni r-raḥīm*, i.e. “in the name of God, the Most Gracious, the Most Merciful”, which almost inevitably appears in all Islamic documents.

The titles of the documents were as follows:

- *Khul‘* and *ibrā’* (renunciation divorce) Certificate (15 documents)
- *Nikāḥ* Contract Termination through *Khul‘* (11 documents)
- *Ṭalāq* Certificate (9 documents)
- *Khul‘* Certificate Prior to Marriage Consummation (2 documents)
- *Ṭalāq* Certificate Due to Harm (*ḍarar*)

Most of the *imam*s I met during my fieldwork agreed that a marriage becomes void once both the wife and husband agree to a *khul‘*- based divorce, regardless of the title of the divorce documents or the specific details of the actual process. The *khul‘* would be valid as long it clearly indicates an exchange of money or *mahr* offered by the wife and accepted by the husband. Faysal Mawlawi, a former Muslim judge and deputy head of the European Council for Fatwa and Research, states that a *khul‘* is valid as long as both the husband and wife agree to end their relationship and the wife pays *fidya*.

Mawlawi adds that some scholars mention a number of relevant terms, such as *khul‘*, *fidya*, *ṣulḥ* (reconciliation), *mubāraʾa* (a two-sided divorce that is similar or equal to *khul‘*), *ṭalāq* and *mufāraqa*.[48] According to Mawlawi, several scholars believe that the explicit use of some of these terms during the process of *khul‘* is mandatory, but the majority assume that any term that conveys the meaning of *khul‘* is appropriate and acceptable.[49]

The documents depict *khul‘* as an initial, irrevocable divorce with minor separation (*ṭalāq bāʾin baynunā sughrā*). In other words, if a husband wanted his wife back, he would need to acquire a new *nikāh* contract and pay another *mahr* once more. However, if a husband divorced his wife three times, this should be an irrevocable divorce with major separation (*ṭalāq bāʾin baynunā kubrā*) and he would have no right to return to his wife unless she married another man who subsequently divorced her or died. The waiting period (*ʿidda*) before a woman can remarry is one month.

In order to better understand and analyse these documents, they can be divided into two groups: *khul‘* by mutual consent and judicial *khul‘*.

Khul‘ by Mutual Consent

The majority of Muslim scholars and the four Sunni schools of Islamic law agree that a *khul‘* requires mutual agreement of husband and wife. According to Nadia Sonneveld, “the four Sunni schools of Islamic law know only a consensual form of *khul‘* divorce”, which indicates that “a woman can take the initiative to request a divorce from her husband, but she still cannot obtain it without his permission”.[50] The mutual agreement of the husband and wife can happen through either *mubāra’a* or *khul‘*. In *mubāra’a*, repudiation is by mutual consent, and each spouse waives financial obligations,[51] whereas in *khul‘*, the husband repudiates his wife at her demand, and in return for *fidya* that may be some or all of her financial divorce rights. Such *fidya* can be a portion (or all) of the *mahr* she has received at the beginning of the marriage, or any other agreement she might have reached with her husband. Faysal Mawlawi stated that the process of *khul‘* could take effect once both parties have willingly agreed to the divorce, without acting under coercion by either the authorities or the judges.[52]

The majority of *imam*s interviewed interpreted *khul‘* as a mutual agreement of husband and wife. Among 59 religious actors who engage in *khul‘*-related matters, 49 practise *khul‘* only by mutual consent and refuse to grant a woman a *khul‘*-based divorce without her husband’s consent. The remaining 10 are more flexible towards playing the role of a Muslim judge (*qāḍī*), thus granting a woman a *khul‘*-based divorce even without her husband’s consent, which is also reflected in the documents (see below).[53] In fact, most of the documented records of *khul‘* cases (82%, or 42 documents) showed that there had been mutual agreement of husband and wife; only 18% of the cases, i.e. nine documents, were settled through judicial measures.

How the documents deal with two important aspects of *khul‘*, the *fidya* and child custody, will be analysed in the following two sections.

The Fidya

The *fidya* is one of the most problematic aspects of the practice of *khul‘* in Germany. It is true that the practice of *khul‘* can be to the advantage of Muslim women, as it the case in Muslim majority contexts. However, German laws place women on equal footing with men, as they are entitled to initiate a divorce if they no longer wish to keep their marriage.

From a Western philosophical perspective, obliging women to pay *fidya* in return for a divorce is discriminatory and undermines any notion of equality between men and women. In addition, as will be discussed below, the issue of *fidya* unduly restricts women's possibility of being divorced, particularly those struggling financially who cannot pay. There is further restriction on their remarrying, especially for those who cannot pay *fidya* which might be some or all of their *mahr*—or, in some cases, even more than the *mahr,* as found during the fieldwork.

The agreements and conditions of *khul'* were consistent with what religious actors stated during the fieldwork, namely, that the wife ought to pay *fidya* and the husband must approve the *khul'*. Although there is no clear minimum or maximum in terms of *fidya*, the religious actors agreed that it is acceptable and customary that the *fidya* should not exceed the advance *mahr* or any costs incurred by the husband, especially if the marriage has not yet been consummated. Gifts, however, are not part of the amount that a wife must return to her husband. However, as a condition to agreeing for *khul',* some husbands may request a considerable sum of money. Many religious actors in Berlin have told me, in detail, about a case where a husband asked his wife to return as much as €50,000 in exchange for agreeing to a *khul'*, although the wife's *mahr* was not more than €5000. Although the religious actors explained that such demands are non-Islamic and thus forbidden in Islam, they cannot, in such a case, pressure the husband to divorce his wife, as they do not have the power or authority to do this. Thus, women are sometimes forced into unfair alternatives, i.e. having to compensate their husbands financially or endure domestic violence or other forms of abuse. Some women will succumb to social, cultural or religious pressure to accept their husband's unjust terms if that is their only way out of a turbulent and abusive marriage. Husbands, on the other hand, sometimes subject their wives and families to punishing pressure and harsh treatment to avoid the potential financial commitments that would result from exercising their right to *ṭalāq*.

Mubāra'a *and* Mahr

The documents examined in this study show that only six cases can be considered as *mubāra'a*, where the husbands waived the advance dower (*mahr muʿajjal/muqaddam*) paid to the wives. The wives, in return, waived the remaining portion of the dower (*mahr muʾajjal/muʾakhkhar*). The remaining 36 documents can be considered as *khul'* as the wives sent back their advance *mahr*s or gold jewellery to their husbands in return for a *khul'*. In some *khul'* cases, the amounts of money a wife had to return to secure a *khul'* were stated in detail. For instance, in one document, Manal's husband demanded she send back a gold ring, a wedding ring, and €5755 in return for his consent to divorce. For more details, the foregoing amount was broken down as follows: *mahr*: €5000; gold: €200; accessories: €40; sandals: €40; clothing: €103; and other additional expenses: €450. In addition, Manal reimbursed the costs of the *nikāh* ceremony.

However, it is important to mention that a *mahr* is sometimes symbolic and is not specifically declared in the *nikāh* certificate, which often worsens the dispute between the spouses and their families. Some of the *nikāh* certificates collected during the fieldwork have only one euro or a copy of the Qur'an set as the *mahr* agreed upon. In this case, many might think that writing a symbolic prompt *mahr* in *nikāh* certificate might make it easier for women to repay this small amount and get a *khul'*. However, the opposite might happen. In many cases, as many *imam*s have explained, couples or their

families agree that the *mahr* should be written symbolically in a marriage contract, but a husband would pay a full *mahr*, which can be a few thousand Euros. In this case, the conflict over the *mahr* becomes complicated and difficult to solve because the *imam* acts on what is actually written in a marriage contract, and if the husband objects and asks the wife to return the full amount he has paid and, in some cases, the engagement presents, the *imam* must defer to him. Without the husband's consent, the *imam* cannot issue a *khul‘* certificate for the wife.

Practically speaking, not all women have the same financial capacity to relinquish their *mahr* or pay additional sums of money to buy their "freedom". If a wife is unable to pay the entire amount but still insists on separating, the money can be paid in instalments and the *khul‘* would remain pending until full amount has been paid. This is what happened with Dalal, who was required to return €3000 worth of gold, in addition to extra €2000. The total amount, i.e. €5000 was then required to be paid on a monthly basis of €200. However, due to the fact that she was struggling financially, Dalal was unable to pay the whole amount even after three years. She then wanted to remarry, and that was an incident that the *imam* who had performed the *khul‘* had never experienced before. In this case, *fatwā*s issued abroad played a crucial role in redefining *khul‘* practices in Germany. The *imam* contacted scholars associated with Islamtoday.com, an online *fatwā* portal based in Saudi Arabia.[54] He recounted Dalal's story and enquired whether she had the right to marry again before she had completely paid off the amount needed, knowing that she was still paying instalments.

The *imam* received the following answer:

> A wife may seek *khul‘* if her husband is oppressing her. She may also ransom herself if the husband requests that as mentioned in the Qur'an (2:229). Hence, the wife would be officially divorced starting from the first instalment she had made. The remaining amount would be considered as an outstanding debt to be repaid by her. She must also observe the waiting period (*ʿidda*) which relates to women divorced through *khul‘* before remarrying, which is one menstrual cycle, to ensure she is not pregnant. Hence, she may remarry.

Based on the *fatwā* given, the *imam* issued Dalal a *ṭalāq* certificate. However, Dalal was not the only wife who was unable to pay the *fidya*. A similar case shows that paying *fidya* for the husband might be highly costly for women struggling financially, even when the *mahr* amount is minimal: the wife was a woman of German origin who had converted to Islam and married another new convert. The woman then wanted to obtain a *khul‘*, but was unable to pay the required *mahr,* which was €500. This case was also a new challenge for the *imam*. It posed the question as to whether it was permissible to collect donations from the mosque where he worked to cover the monetary sum that the wife was required to pay? After extensive consultations with a group of scholars, the *imam* concluded that, according to *sharīʿah*, it is acceptable to collect donations for the purpose of setting a woman free from a life she does not want. And thus, the sum was collected and the wife was able to secure her *khul‘*.

In four cases, the husbands opposed their wives' demand for *khul‘*, which is relatively unusual because, under *sharīʿah* law, men can always divorce their spouses through *ṭalāq*. The only likely reason for a husband to choose *khul‘* over *ṭalāq* would be to evade the financial responsibilities associated with a *ṭalāq*-based divorce, as in a *khul‘* divorce, a wife usually relinquishes her rights to material support embodied in the *mahr* and *nafaqa* in exchange for her "freedom".[55] Such a form of *khul‘* can also be considered as *mubāra'a*. If a husband agrees to offer *khul‘*, the divorce takes the following form:

> *Khul‘* and *Ibra’* Divorce
> The Islamic Institution of (name) testifies that the husband: Sa‘eed Alan, Place of Birth: Syria, has divorced his wife: Juliana Alexa, Place of Birth: Czech Republic. The two sides have agreed to *khul‘* and *ibra’*. The husband said to the wife: “I absolve you from the bond of matrimony in return for absolving me from your *Sharīʿah* rights,” and the wife replied: “I accept and absolve you from my *Sharīʿah* rights”.

*Child Custody (*Ḥaḍāna*)*

Even though Muslim scholars disagree on different conditions of *khul‘*, there are some conditions that are considered impermissible under *sharīʿah*.[56] These include forcing a wife to forsake custody of her children in exchange for a *khul‘*. Some husbands exert leverage over their spouse by using child custody during the *khul‘* negotiations and pressure the wives to willingly give up child custody in return for a divorce. Under *sharīʿah* law, a wife divorced by her husband has temporary rights of custody until the child has reached a certain age. The exact age varies across the *madhhabs* (legal schools).[57]

All religious actors try to avoid any involvement in child custody cases and advise spouses to settle the matter under German law, since it is virtually impossible to implement any other arrangement. This is because, while the German judiciary cannot assist women who only have a *nikāḥ* and seek a religious divorce, the state courts do not link child custody to the marital status of the parents. Therefore, a wife can always address state courts and file for the custody of her child, regardless of the nature of her marriage being religious or civil. In such a case, the court will decide the matter based on the best interest of the child.

However, some religious actors try to reach an agreement between husband and wife in a manner that does not contradict the German law. According to Imam Ayoub, if both parties want to avoid having to appear in a German court, they have no choice other than to reach a joint decision on the issue of custody. Among other things, the couple also has to agree on visitation schedules/arrangements as well as the education of the children. In such cases, no party is forced to accept any decision that is not in their interest since they can always resort to the German courts. Therefore, some *imam*s make it a rule of thumb that any decision reached must comply with the German law. However, achieving this is rather difficult, especially since most *imam*s are not even vaguely familiar with the German legal system.

Only seven of the 51 documents covered custody-related matters in detail. Of these, either the custody of the children was given to the mother, or a joint custody arrangement was reached. Had these cases been brought to German courts, the same results would have been reached because, under the German law, custody must be shared. This also applies to children born outside marriage.

In the first case in question, the husband relinquished child custody to his wife, but was allowed to visit the children. In the second case, a shared custody agreement entailed the child spends four and a half days with the mother and two and a half days with the father. Further arrangements concerning the child’s future were also agreed upon. In the third case, the children would stay with their father from Friday noon until Sunday afternoon and spend the remainder of the week with their mother. The fourth case, arranged according to *sharīʿah* law, entailed the child staying with her mother until the age of nine, with custody afterwards being decided according to the child’s best interest. In the fifth case, shared custody was agreed upon without any mention of further details.

In the sixth and seventh cases, the husbands asked their wives to relinquish custody in exchange for the *khul‘* and they agreed to this. Unfortunately, my attempts to locate these two wives to obtain further details from them were unsuccessful. Instead, I called Imam Mamdouh who had organised their *khul‘* divorces. The *imam* affirmed that these cases were the only ones in which the wives were asked to waive their right to custody. He also added that these were extremely complicated cases and the two husbands had categorically rejected a *khul‘* by mutual consent. Consequently, the *imam* persuaded these two wives to accept their terms and then afterwards, once having secured the *khul‘*, take the matter to court to obtain custody. Mamdouh went on to explain that German courts cannot force a husband to divorce his wife, but they almost invariably grant custody to the mother, even if there was no marriage. Mamdouh stated that, according to *sharīʿah* law, all requirements other than the *fidya* are invalid—a matter that all scholars have agreed upon. The scholars believe that if the husband insists on custody in exchange for *khul‘*, the divorce would be deemed valid and the wife could then seek redress from the German courts.

Judicial *Khul‘*

Muslim scholars are divided over whether or not the judge has the right to terminate a marriage contract if a husband refuses to accept his wife's request for a *khul‘*.[58] They disagree over whether a *qāḍī* can force a husband to accept the *fidya* and, therefore, divorce his wife. According to Bustami Khir, "very few jurists have taken the view that *khul‘* can be decided [only] in a court, and the majority including Mālik, al-Shāfiʿī and [Ibn] Ḥanbal allow it, with or without the intervention of a judge".[59] Despite this dispute, the laws pertaining to personal status in several Muslim countries, including Pakistan,[60] Egypt,[61] and Jordan,[62] have been reformed and women are now able to submit a complaint to the judge.[63] Since then, a judge has the right to terminate a marriage contract through *khul‘*, even if the wife and/or husband, refuses to accept the decision.

Although the legal framework in the Islamic world allows Muslim judges to perform *khul‘* in the context of their own national legal system, religious actors in Germany are not recognised as judges. Hence, the majority of the ones I met in Germany categorically refused to play any part in the process of *khul‘*. Hani, a Berlin-based Egyptian *imam,* believes that any Muslim woman who finds herself in an unfitting position regarding her marriage has the right to seek separation from her husband with the help of *khul‘*. Should a husband refuse to cooperate, the *imam* believes that the wife has the right then to resort to a Muslim judge. However, Hani, who has now been conducting *khul‘* divorces for six years, explains that it is impossible for a Muslim woman to get a divorce if her husband is averse to the idea, and he attributes this dilemma to the lack of a formal Islamic judicial authority in Germany. He also added that he and his colleagues do not perform *khul‘* without a husband's consent, which could theoretically place women in a state of uncertainty for an undecided period.

However, very few *imam*s tried to reinterpret the religious texts and to evoke certain *fatwā*s in order to adapt the role that judges play in Muslim countries to the European context. Basically, these *fatwā*s state that in the absence of a Muslim judge, as in Europe, the Muslim community may assign the powers of a Muslim judge to the local *imam* or a group of people.[64] Ahmed, an Egyptian *imam*, states that if an *imam*, or committee tasked with overseeing marriage issues, makes a decision, then such a decision must be adhered to and implemented.

The Judicial Khul‘ *Process*

Based on several interviews with religious actors, as well as the documents analysed, it can safely be concluded that, as a general rule, a judicial *khul‘* process consists of several steps. First, a wife or a representative of hers makes an oral or written request for a separation from her husband through *khul‘*. In most cases, a wife is asked to attach her *nikāh* certificate with the request, along with any other documents or witnesses she might have to support her case. Even though there is no religious requirement for a wife to justify her request for a *khul‘*, women, seeking divorce, tend to present documentary evidence of their husband's prolonged absence or mistreatment of them. For instance, one document reveals that a wife named Fatima sought divorce because her husband was addicted to gambling, hit her, missed his prayers, took his children's money, and hardly ever spoke to her. In some cases, wives present documents to support their position during the negotiation process, such as police reports or a hospital certificate proving that their spouses had physically assaulted them.

In the second step, which is optional, a wife might ask an *imam* to represent her by following up on her case and keeping in touch with her husband. The third step starts when, after submitting the request for a *khul‘*, an *imam* attempts to contact the husband with the intention of bringing about a reconciliation between him and his wife by playing a mediatory role. If the mediation process fails and both the husband and wife remain intransigent, the *imam*, in the fourth stage, will then attempt to persuade the husband to divorce his wife with kindness and grace in return for a *fidya* he will receive for the loss of his wife. These attempts are repeated at least three more times over a period of three to six months. If the husband still refuses to reach an agreement with his wife and wants to subject her to a state of uncertainty, the fifth step would be for the *imam* to notify (or even threaten) him claiming that the *khul‘* process will not be interrupted even without his consent. If there is still absolutely no way to achieve reconciliation or a mutual *khul‘* agreement, the sixth and final step may be for the *imam* to perform a "judicial *khul‘*" and later inform the husband that his wife has divorced him and, at that point, get him to sign the divorce certificate.

The Practice of Judicial Khul‘

The following case demonstrates how judicial *khul‘* is practised and under what conditions. Asma chose a *nikāḥ* in 2007, but the marriage was not a success, as her husband brutally and systematically beat her and on one occasion even broke her nose, which necessitated her admission to the hospital for treatment. However, because Asma and her husband had failed to record the *nikāḥ* at the registry office as a civil marriage, she had no alternative but to seek help from Imam Ayoub if she was to obtain a *ṭalāq* from her husband on the grounds of mistreatment.

During the fieldwork conducted in Berlin in 2015, I saw her request supported by medical evidence, police statements and court reports, which included the following excerpt:

> My name is Asma Naser. I was born in Berlin in 1978 and I would like to be divorced from Ahmed Salem, who was born in Beirut in 1974. He has been beating me and my son (around three years old) for a while now. I submitted a complaint twice to the court[65] and he was ordered by the court to stay away from me. Ultimately, all I want is to live my life with my son peacefully.

In response to Asma's request for a *ṭalāq* from her husband, three *imam*s—Ayoub from Palestine, Samir from Tunisia, and Tawfiq from Algeria—met in Berlin on 5 May 2011 and together decided to help Asma. After lengthy proceedings, a committee composed of the previously mentioned three *imam*s issued the following decision:

> In the name of God, the Beneficent, the Merciful
> *Khul‘* and *Ibrā'* (Renunciation Divorce) Due to Harm (*ḍarar*)
> We […] and a group of Sheikhs testify that sister Asma Naser approached us and complained about her husband's (Ahmed Salim) mistreatment of her. She informed us that he had beaten her and threatened to kill her and kidnap her son[.] As a result, she filed a lawsuit against him at a German court and won the case. Subsequently, the judge ordered him to refrain from calling her, talking to her or going to her house. She also showed us court documents and medical reports demonstrating the damages that she had incurred, as well as the court decision […]. In order to verify her claims, we immediately contacted her husband and asked him to come and discuss the matter with us. Even though he promised to come to us on several occasions, he failed to keep his promise each time[.] In view of the damages incurred by Asma, in light of her statements, and in line with the Islamic principles of non-compulsion and fair divorce when a harmonious marriage becomes impossible, we decided to grant sister Asma her freedom and right to seek a *khul‘* divorce according to Islamic *sharīʿah* […] Therefore, we have decided that the wife is divorced from the husband in a final, irrevocable divorce. As of today, she must observe the waiting period.[66]

Only 18% of the *khul‘* documents (9 out of 51) were carried out as a judicial *khul‘*. Unlike the documents associated with a *khul‘* by mutual consent, because the decision was made without the husband's agreement, these documents provide no details on either the *mahr* or custody. Nonetheless, these documents do contain important information on why some women were forced to take this route. In contrast to the assertions of certain conservative *imam*s and community leaders who think that giving women the right to obtain a *khul‘* will jeopardise family cohesion, some documents reveal the desperate and futile attempts of wives to protect their families and restore their marriage. All but one document reveal that the women only sought judicial *khul‘* after having been subjected to violence or harsh mistreatment. For instance, four cases indicated that the main reasons for seeking a *khul‘* were domestic violence, drug abuse and/or drug dealing, or imprisonment of the husband. The remaining five cases documented the husband's attempt to manipulate his spouse into waiving child custody or paying money. For instance, Wafa's husband insisted that she waive all her rights, in the presence of a lawyer, in exchange for *khul‘*. Even after accepting these conditions, the husband changed his mind and refused to divorce her. Since this was quite an unprecedented case, the *imam* in question contacted scholars associated with the *Islam Today* website and obtained a *fatwā* concluding that, "since the husband has agreed to divorce the wife in exchange for waiving the *mahr*, this should be counted as *khul‘* and there is no way to reverse it". Only then did the *imam* issue a *khul‘* certificate.

Conclusion

This study has focused on the question of how religious actors settle Islamic religious-only marriage disputes when a husband refuses to cooperate in a *khul‘* process. An analysis of 51 *khul‘*-related documents has provided a unique insight into the actual practices

of *khul'* in Germany in the absence of a formal Islamic judicial body. This study divided *khul'*- related cases into two main categories. The first deals with cases in which there is mutual consent. In other words, situations where both the husband and wife agree to seek a *khul'*. Essentially, it is strictly important, since there is no Islamic judicial authority in Germany, that the overwhelming majority of *khul'* divorces are conducted on the basis of mutual agreement of the husband and wife. In such cases, a wife is obliged to compensate her husband monetarily for allowing her to terminate their marriage. If she refuses to pay the *fidya* or agree with her husband's terms, she could well remain in a state of uncertainty for a prolonged period. Alternatively, a wife could be forced to continue living with her husband and endure both the psychological or physical abuse that this decision might entail. Where the *khul'* takes place through mutual consent, the issue of child custody is also addressed and, as discussed, child custody-related decisions are deliberately taken to comply with extant German law.

The second category of *khul'*-related cases involves arbitration. Here, the religious actors invoke particular religious *fatwā*s through which they can acquire for themselves some of the powers normally reserved for judges in Muslim countries. These, in turn, enable them to end a *nikāḥ* through *khul'*, even if a husband withholds his consent. Although this procedure grants some women their freedom, as Muslims consider it highly controversial, few religious actors are prepared to arrange a *khul'* through arbitration. Their objection stems from a fear of escalating social tensions within the Muslim community, especially in cases where a husband refuses to divorce his wife. Besides, forcing a husband to divorce his wife against his will is an exceedingly contentious topic among Muslim scholars. When a husband refuses to divorce his wife, the lack of an Islamic judiciary in Germany and the fact that *imam*s are not qualified to play the role of judges make the issue even more complex, even among proponents of arbitrated *khul'*.

Consequently, a considerable number of *imam*s call for measures and solutions to face the challenge related to *khul'* practices in Germany in order to protect women from abusive husbands. During the fieldwork conducted for this research, some *imam*s explained to me that they were discussing to introduce *ṭalāq al-tafwīḍ* (the delegated right to divorce for a woman) to the marriage contract in order to empower women by replacing the husband's consent with a kind of "internally official" verdict. Other *imam*s have started to think of establishing an "advisory body" that would aim to settle family disputes and deal with Islamic divorce-related issues, especially in situations where a husband refuses to divorce his wife. Other Islamic organisations and mosques have started to organise training courses to train a group of *imam*s in mediation and arbitration techniques.

However, all of these measures are basically dealing with the consequences of the problem rather than the cause. Muslim communities might need to address the root cause of the need for *khul'* in the first place, namely, the existence of Islamic religious-only marriage. This requires a set of solutions, including streamlining the marriage registration processes, and conducting awareness campaigns that explain the disadvantage of unregistered marriages with regard to the protection of women's rights and their social security. Secondly, Muslim communities can use and benefit from different opportunities and spaces, which the German legal system already recognises and provides for all citizens in the areas of professional mediation and arbitration. Under German laws, Muslims can institutionalise professional mediation by offering training for religious mediators who can be equipped with professional skills needed to resolve disputes and prevent violence, particularly domestic violence against women and children which is often involved in marital dissolutions.

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NOTES

1. A short explanation of major Arabic terms is given only at first usage, and thereafter the transcribed form is used throughout the rest of the document.
2. Judith Tucker, *Women, Family, and Gender in Islamic Law*, Cambridge: Cambridge University Press, 2008, p. 95.
3. This work was supported by the [German Research Foundation (DFG)] as part of the project PROMETEE (DFG-TH 1582/1-1); Senatsverwaltung für Justiz und Verbraucherschutz (Senate Department for Justice and Consumer Protection), Berlin; Bayerische Akademie der Wissenschaften (Bavarian Academy of Sciences and Humanities).
4. To name only a few of these studies: Maurits Berger, ed., *Applying Shari'a in the West: Facts, Fears and the Future of Islamic Rules on Family Relations in the West*, Leiden: Leiden University Press, 2013. Elisa Giunchi, *Muslim Family Law in Western Courts*, London and New York: Routledge, 2014. Prakash Shah, Marie-Claire Foblets and Mathias Rohe, eds., *Family, Religion and Law: Cultural Encounters in Europe*, New York: Routledge, 2016.
5. Mashood Baderin, "Understanding Islamic Law in Theory and Practice", *Legal Information Management*, Vol. 9, No. 03, 2009, pp. 186–190, pp. 186–187.
6. See for example, John Bowen, *On British Islam: Religion, Law, and Everyday Practice in Shari'a Councils*, Princeton: Princeton University press, 2016.
7. John Bowen, *A New Anthropology of Islam*, Cambridge: Cambridge University Press, 2012, p. 159.
8. See for example the website of the Islamic Council UK (ICUK) in Birmingham, http://theislamiccouncil.co.uk/ (accessed 14 January 2019).
9. John Bowen, *A New Anthropology of Islam*, *op. cit*., p. 158.
10. To name only a few researchers who are currently conducting research on the topic: Mathias Rohe and Yafa Shanneik (Germany), Annelies Moors, Susan Rutten and Esther van Eijk (the Netherlands), Federica Sona (Italy), Sanna Mustasaari and Mulki Al-Sharmani (Finland), Islam Uddin and Rajnaara Akhtar (England).
11. Mathias Rohe, "Alternative Dispute Resolution among Muslims in Germany and the Debate on 'Parallel Justice'", in *Exploring the Multitude of Muslims in Europe: Essays in Honour of Jørgen S. Nielsen*, eds. Niels Valdemar Vinding, Egdūnas Račius and Jörn Thielmann, Leiden and Boston: Brill, 2018, pp. 89–108, p. 92.
12. Small request (*Kleine Anfrage*) by Stephan Brandner and the AfD parliament bloc, The German Parliament (the Bundestag), document 19/3728, 07.08.2018, http://dip21.bundestag.de/dip21/btd/19/037/1903728.pdf (accessed 14 January 2019).
13. Mathias Rohe, a legal expert and the resident professor of civil law, international private law and comparative law at the University of Erlangen-Nuremberg's Faculty of Law, is considered to be a leading figure on this regard. In addition, since 2017, Max Planck Institute for Social Anthropology (Halle/Saale) jointly with the Max Planck Institute for Foreign and International Criminal Law (Freiburg i. Br.), have been investigating comparatively under the leader of Marie-Claire Foblets and Hatem Elliesie the conflict regulations used and practiced by a number of minority groups living in Germany from a legal as well as an anthropological perspective. For further information on the project, see: https://www.eth.mpg.de/4410211/conflictregulation (accessed 14 January 2019).
14. Mathias Rohe, "Paralleljustiz? Chancen und Gefahren außergerichtlicher Streitbeilegung in Deutschland", TOA-Magazin, Vol, 2, Dezember 2013, pp. 34–37, p. 34. See also, Mathias Rohe, Alternative Dispute Resolution among Muslims in Germany and the Debate on "Parallel Justice", *op. cit*.
15. John Bowen, *A New Anthropology of Islam*, op. cit., p. 4.
16. *Ibid*., p. 3.
17. See regarding my methodological approach, Russell Bernard, *Research Methods in Anthropology: Qualitative and Quantitative Approaches*, United Kingdom: Lanham Altamira Press, 2006.
18. The subject of dissolving religious marriages by *khul'*, which are also registered as civil marriages, is beyond the scope of this article. For further discussion on how Muslim women seek to end this type of marriage by *khul'* in the Netherlands, see, Esther van Eijk, "Khul' Divorce in the Netherlands:

Dutch Muslim Women Seeking Religious Divorce", *Islamic Law and Society*, Vol. 26, No. 1–2, 2019, pp. 36–57.

19. Why some Muslims do not register their marriage is a matter of multiple dimensions and motives, which go beyond this study. For further information of why some couples prefer religious-only marriages in Germany, see, Mathias Rohe and Mahmoud Jaraba, *Paralleljustiz: Eine Studie im Auftrag des Landes Berlin, vertreten durch die Senatsverwaltung für Justiz und Verbraucherschutz*, Berlin: Senatsverwaltung für Justiz und Verbraucherschutz, pp. 112–122, (accessed 14 January 2019). For an in-depth discussion in the UK contexts, see, Rajnaara Akhtar, "Unregistered Muslim Marriages in the UK; Examining Normative Influences Shaping Choice of Legal Protection", in *Personal Autonomy in Plural Societies, A Principle and Its Paradoxes*, eds. Marie-Claire Foblets, Michele Graziadei and Alison Dundes Renteln, London: Routledge, 2017, pp. 140–155.
20. All the names and personal information (dates and places of birth) mentioned in this study are pseudonyms to assure anonymity of the interviewees.
21. See also, Mathias Rohe and Mahmoud Jaraba, "*Paralleljustiz: Eine Studie im Auftrag des Landes Berlin, vertreten durch die Senatsverwaltung für Justiz und Verbraucherschutz*", *op. cit.*, pp. 111–112. Mahmoud Jaraba, "The Practice of *Khul'* in Germany: Pragmatism versus Conservativism", *Journal of Islamic Law and Society*, Vol. 26, No. 1–2, pp. 83–110.
22. Two special issues have recently emerged analysing Islamic religious-only marriages within Muslim minority and Muslim-majority contexts. For further information, see: Rajnaara Akhtar, Rebecca Probert and Annelies Moors, "Informal Muslim Marriages: Regulations and Contestations", *Oxford Journal of Law and Religion*, Vol. 7, No. 3, 2018, pp. 367–375. Annelies Moors, Rajnaara Akhtar and Rebecca Probert, "Contextualizing Muslim Religious-Only Marriages", *Sociology of Islam*, Vol. 6, No. 3, pp. 263–273.
23. See, Annelies Moors, "Unregistered Islamic Marriages: Anxieties about Sexuality and Islam in the Netherlands", in *Applying Shari'a in the West: Facts, Fears and the Future of Islamic Rules on Family Relations in the West*, ed. Maurits Berger, Leiden: Leiden University Press, 2013, pp. 141–164. For recent initiative to further criminalise Muslim-only marriages, see, Annelies Moors, Martijn de Koning and Vanessa Vroon-Najem, "Secular Rule and Islamic Ethics. Engaging with Muslim-Only Marriages in the Netherlands", *Sociology of Islam*, Vol. 6, No. 3, 2018, pp. 274–296.
24. Gerhard Robbers, *Religion and law in Germany*, The Netherlands: Kluwer Law International, 2013, p. 305.
25. Mathias Rohe, "Alternative Dispute Resolution among Muslims in Germany and the Debate on 'Parallel Justice'", *op. cit.*, p. 104.
26. See Mahmoud Jaraba, "The Practice of *Khul'* in Germany: Pragmatism versus Conservativism", *op. cit*.
27. Pascale Fournier and Pascal McDougall, "False Jurisdictions? A Revisionist Take on Customary (Religious) Law in Germany", *Texas International Law Journal*, Vol. 48, No. 3, 2013, pp. 435–464, p. 445.
28. See for example, Abdul Hakim Quick, "*Al-Mu'allaqa*: The Muslim Woman Between Divorce and Real Marriage", *The Journal of Islamic Law*, Vol. 3, No. 27, 1998, pp. 27–40, pp. 29–30.
29. Mahmoud Jaraba, "Private Dispute Mediation and Arbitration in Sunni-Muslim Communities in Germany", in *Marital Captivity: Divorce, Religion and Human Rights*, eds. Susan Rutten, Bendicta Deogratias and Pauline Kruiniger, The Hague: Eleven International Publishing, 2019, pp. 17–43, p. 20. Mathias Rohe and Mahmoud Jaraba, "*Paralleljustiz: Eine Studie im Auftrag des Landes Berlin, vertreten durch die Senatsverwaltung für Justiz und Verbraucherschutz*", *op. cit*., pp. 130–131.
30. German Islam Conference (Deutsche Islam Konferenz), "The history of Muslims in Germany", 08.12.2008, http://www.deutsche-islam-konferenz.de/DIK/EN/Magazin/Lebenswelten/ZahlenDatenFakten/GeschichteIslam/geschichteislam-node.html;jsessionid=6D700BC4AAA4ADFFB715A56FD3D1A67E.2_cid368 (accessed 14 January 2019).
31. Ino Augsberg and Stefan Korioth, "The Interplay Between State Law and Religious Law in Germany", in *Religious Rules, State Law, and Normative Pluralism—A Comparative Overview*, ed. Rossella Bottoni, Rinaldo Cristofori and Silvio Ferrari, Switzerland: Springer, pp. 175–192, p. 183.
32. *Ibid.*
33. *Ibid*.
34. *Ibid.*
35. Mathias Rohe, "Alternative Dispute Resolution among Muslims in Germany and the Debate on 'Parallel Justice'", *op. cit.*, p. 96.

36. Mahmoud Jaraba, "Private Dispute Mediation and Arbitration in Sunni-Muslim Communities in Germany", *op. cit.*, p. 37.
37. Mathias Rohe, "Germany", *op. cit.*, p. 306.
38. For an in-depth study of how the role of *imam*s has changed in the recent years to become more involved in mediation and arbitration, see Mahmoud Jaraba "Private Dispute Mediation and Arbitration in Sunni-Muslim Communities in Germany", *op. cit.*
39. Although the right of *ṭalāq* is available to the husband at any time and in any place, he may transfer such one-sided divorce to the wife by delegating her the right and power to divorce herself (*ṭalāq al-tafwīḍ*) in the marriage contract, which is permissible under all the Sunni schools. However, I did not come across any cases where such a type of divorce is practiced. See Judith Tucker, *Women, Family, and Gender in Islamic Law*, *op. cit.*, p. 91.
40. See, Mathias Rohe, *Islamic Law in Past and Present*, Leiden and Boston: Brill, 2014, p. 117.
41. Ali Ahmed, *Al-Qurʾan*, Princeton, NJ: Princeton University Press, 1993, p. 40.
42. Bustami Khir, "The Right of Women to No-Fault Divorce in Islam and Its Application by British Muslims", *Islam and Christian-Muslim Relations*, Vol. 17, No. 3, 2006, pp. 295–306, p. 297.
43. In, Nadia Sonneveld and Erin Stiles, "*Khulʿ*: Local Contours of a Global Phenomenon", *Islamic Law and Society*, Vol. 26, No. 1–2, pp. 1–11, p. 2.
44. A special issue that studies *khulʿ* in different contexts has recently been published. The ethnographic fieldwork attempts to answer several questions regarding *khulʿ*, such as: Is *khulʿ* consensual or non-consensual, judicial or extrajudicial, fault- or no-fault-based? Does *khulʿ* result in *ṭalāq* (unilateral repudiation by a husband), or is it an entirely different form of divorce? Is *khulʿ* initiated by wives or spouses? See, Nadia Sonneveld and Erin Stiles, "*Khulʿ*: Local Contours of a Global Phenomenon", *op. cit.*, pp. 1–11.
45. See also, Bustami Khir, "The Right of Women to No-Fault Divorce in Islam and its Application by British Muslims", *op. cit.*, p. 297.
46. For comparative ethnographic and document-based research of how *khulʿ* is practised in contemporary Muslim communities, see Nadia Sonneveld and Erin Stiles, "*Khulʿ*: Local Contours of a Global Phenomenon", *op. cit*.
47. There are seven cases without specified dates.
48. For further discussion of how *khulʿ* is practiced and understood in different Muslim contexts, see a comparison between Egypt and Morocco, Nadia Sonneveld, "Divorce Reform in Egypt and Morocco. Men and Women Navigating Rights and Duties", *Islamic Law and Society*, Vol. 26, No. 1–2, 2019, pp. 149–178; in Zanzibar, Erin Stiles, "It Is Your Right to Buy a Divorce: Judicial Khuluu in Zanzibar", *Islamic Law and Society*, Vol. 26, No. 1–2, 2019, pp. 12–35; in Indonesian, Stijn van Huis, "*khulʿ* Over the Longue Durée: The Decline of Traditional *Fiqh*-Based Divorce Mechanisms in Indonesian Legal Practice", *Islamic Law and Society*, Vol. 26, No. 1–2, 2019, pp. 85–82.
49. Faysal Mawlawi, "*Al- khulʿ a wa-aḥkāmihi aš-šarʿīya maʿa taṭbīqāt ʿala al-aqalliyāt al-muslima*", *Al-muǧlis al-aurūbī li-al-iftāʾ wa-l-buḥūṯ, al-maǧalla al-ʿilmīya*, Vol. 8/9, 2006, pp. 209–240, p. 218.
50. Nadia Sonneveld, *Khulʿ Divorce in Egypt: Public Debates, Judicial Practices, and Everyday Life*, Cairo and New York: The American University in Cairo Press and Oxford University Press, 2012, p. 12.
51. Pauline Kruiniger, *Islamic Divorces in Europe: Bridging the Gap between European and Islamic Legal Orders*, The Hague: Eleven International Publishing, 2015, pp. 84–85.
52. Faysal Mawlawi, "*Al- khulʿ a wa-aḥkāmihi aš-šarʿīya maʿa taṭbīqāt ʿala al-aqalliyāt al-muslima*", *op. cit.*, p. 230.
53. For an in-depth analysis of the background, attitudes and religious argument of those religious actors, see Mahmoud Jaraba, "The Practice of *Khulʿ* in Germany: Pragmatism versus Conservativism", *op. cit.*
54. The website is no more active online and the author has not been able to find any information which can help us to understand its theological basis.
55. For similar observation and results, see Erin Stiles, "When Is a Divorce a Divorce? Determining Intention in Zanzibar's Islamic Courts", *Ethnology*, Vol. 42, No. 4, pp. 273–288.
56. Faysal Mawlawi, "*Al- khulʿ a wa-aḥkāmihi aš-šarʿīya maʿa taṭbīqāt ʿala al-aqalliyāt al-muslima*", *op. cit.*, p. 222.
57. See Judith Tucker, *Women, Family, and Gender in Islamic Law*, *op. cit.*, p. 29.
58. *Ibid.*, p. 99.

59. See also, Bustami Khir, "The Right of Women to No-Fault Divorce in Islam and Its Application by British Muslims", *op. cit.*, p. 298.
60. Muhammad Ifzal and Salman Farooq, "*Khul'* (Redemption) in Islamic Law and Its Practice in Pakistani Courts, A Legal Critical Analysis", *Mediterranean Journal of Social Sciences*, Vol. 5, No. 3, 2014.
61. Nadia Sonneveld, *Khul' Divorce in Egypt: Public Debates, Judicial Practices, and Everyday Life*, *op. cit.*
62. Kelli Harris and Fida Adely, *Personal Status Law Reform in Jordan: State Bargains and Women's Rights in the Law*, Washington, DC: Georgetown University, 2015.
63. See, Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*, Amsterdam: Amsterdam University Press, 2007, pp. 107–125.
64. For a detailed discussion on how those *imam*s interpret the Islamic text and implement certain *fatwā*s in Germany regarding *khul'*, see Mahmoud Jaraba, "The Practice of *Khul'* in Germany: Pragmatism versus Conservativism", *op. cit.*
65. Her complaint to the court was that her husband had beaten her, and not to terminate the marriage, as German courts do not recognise the *nikāḥ*.
66. Mahmoud Jaraba, "Private Dispute Mediation and Arbitration in Sunni-Muslim Communities in Germany", *op. cit.*, pp. 17–19.